

1987

# State of Utah v. Vicki Gallegos : Brief of Respondent

Utah Court of Appeals

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David L. Wilkinson; Attorney General; Las Daroczi; Deputy Weber County Attorney; Attorney for Respondent.

Ted K. Godfrey; Public Defender Association; Attorney for Appellant.

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## Recommended Citation

Brief of Respondent, *Utah v. Gallegos*, No. 870411 (Utah Court of Appeals, 1987).  
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UTAH COURT OF APPEALS  
BRIEF

IN THE UTAH COURT OF APPEALS

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NO. 870411-CA :  
Plaintiff-Respondent, :  
v. : Case No. 870411-CA  
: Priority #2  
VICKI GALLEGOS, :  
Defendant-Appellant. :

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BRIEF OF RESPONDENT

THIS IS RESPONDENT'S BRIEF ON DEFENDANT'S  
APPEAL OF THE TRIAL COURT'S DENIAL OF A  
MOTION TO WITHDRAW PLEAS OF GUILTY.

TED K. GODFREY  
PUBLIC DEFENDER ASSOCIATION  
205 26th Street, Suite 13  
Ogden, Utah 84401  
  
Attorney for Appellant

DAVID F. WILKINSON  
Attorney General  
LES DAROCZI  
Deputy Weber County Attorney  
7th Floor, Municipal Building  
Ogden, Utah 84401

Attorneys for Respondent

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	:	
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TED K. GODFREY  
PUBLIC DEFENDER ASSOCIATION  
205 26th Street, Suite 13  
Ogden, Utah 84401  
  
Attorney for Appellant

DAVID F. WILKINSON  
Attorney General  
LES DAROCZI  
Deputy Weber County Attorney  
7th Floor, Municipal Building  
Ogden, Utah 84401  
  
Attorneys for Respondent

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NATURE OF THE PROCEEDINGS

This is respondent's brief on defendant's appeal of the trial court's denial of the Motion to Withdraw defendant's pleas of guilty.

STATEMENT OF FACTS

The defendant had been charged with two felonies; Distribution of Cocaine for Value, a second degree, and Theft, third degree. She entered her pleas of not guilty to both charges on July 8, 1987, T 1-10.

Upon a plea negotiation she pleaded guilty to the charge of Distribution of Cocaine for Value, second degree; and to Attempted Theft, a Class A misdemeanor, on August 26, 1987, T 10-23.

At the same time she executed a Statement by Defendant in advance of Pleas of Guilty, R 12-17. In this statement she acknowledged, "I sold drugs. . . .", R.13. When the court asked, "Did you sell cocaine to somebody?" she replied, "Yeah." T. 21.

On the date set for sentence, September 16, 1987, her attorney Mr. Godfrey, moved to withdraw her pleas of guilty to both charges. T.1-10 Addendum. Mr. Godfrey stated, "The reason for that is because she believes that there may be an entrapment issue that she wants to bring up. In my dealings with her prior to this time, I did not see an entrapment issue. We never talked about it. But she apparently talked with another attorney and feels like there is somewhat of a factual basis for an entrapment issue and wants to withdraw her plea." T.2 Addendum. She said to the court, "I felt like I was pressured to plead guilty because when I went home, I did not feel right about it, because I did not sell drugs." T.5 Addendum

The prosecutor objected to the motion stating the pleas were proper, her rights were carefully explained and that she wanted to withdraw her pleas because she learned that the recommendation of the probation report was for prison. T.3 Addendum. This was denied by Mr. Godfrey. Ibid. Mr. Godfrey acknowledged that he went through with the defendant covering the Statement of Defendant in Advance of Pleas of Guilty. T.4 Addendum.

Another defense attorney, Ms. Salerno, addressed the court stating she was in the process of trying a case and based on the testimony of a confidential informant, "there might very well be an applicable entrapment defense or other defense or it's along the line of newly discovered evidence." T.6 Addendum.

the prosecutor disputed the validity of this claim. Ibid. The court remarked to the defendant, "I don't see any entrapment evidence at all, either in your statement or their statement." Ibid. The court denied the motion stating, "It appears to the court that this is a straight gamble on a better recommendation." T.8 Addendum.

She was then sentenced on both charges and committed to prison.

#### STATEMENT OF ISSUES

This is a single issue appeal, i.e. did the trial court abuse it's discretion in denying a motion to withdraw defendant's pleas of guilty.

#### SUMMARY OF THE ARGUMENT

The court's denial of the Motion to Withdraw the pleas was well within the discretion of the magistrate.

#### ARGUMENT

In his brief on appeal, Mr. Godfrey, attorney for the defendant/appellant has gone far afield in his Statement of Facts. In the first paragraph he describes what lead up to the arrest of the defendant. This is not revealed by examining the record. In the next paragraph he describes how another defendant was acquitted of similar charges. The record reveals that a Ms. Salerno advised the court she was in the process of trying a case. T.6 Addendum. He also states that the same

confidential informants in that other case were involved in the defendant's case, and that some of the same circumstances occurred in the defendant's case as in that other case. The record is devoid of these "facts".

In the next paragraph Mr. Godfrey attempts to explain why he never saw the entrapment issue. This also does not belong under a recitation of the facts of the case and should be disregarded by this court as all "facts" not appearing in the record.

Section 77-13-6 of the Utah Code of Criminal Procedure sets forth that "a plea of guilty . . . may be withdrawn only upon good cause shown and with leave of court."

A defendant may not withdraw a guilty plea as a matter of right either before or after sentencing; a Motion to Withdraw a Plea is addressed to the sound discretion of the trial court. State v. Bennett, 657 P.2d 1353 (Utah 1983); State v. Hanson, 627 P.2d 53, 54 (Utah 1981).

"In all discretionary matters, due to his prerogatives and his advantaged position, the trial judge is allowed considerable latitude in the exercise of that discretion, which the appellate court will not interfere with unless it plainly appears that there was abuse thereof." State v. Forsyth, 560 P.2d 337, 339 (Utah 1977). "We will not interfere with a trial judge's determination that a defendant has failed to show good cause unless it clearly appears that the trial judge abused his



discretion." State v. Mildenhall, No. 860366 (Utah 1987). The burden of showing abuse of discretion is on the party making that claim. State v. Larson, 560 P.2d 335 (Utah 1977).

The trial court simply was not obliged to believe the defendant's newly asserted version of facts. In Larson the court noted, "it is appropriate to bear in mind that the trial court was not obliged to believe the self-serving statements of the defendant as to his claim of a later discovered basis of defense." Also, the court could have relied on the well established principle that "when a defendant enters a plea of guilty upon the advice of a competent attorney, the plea is deemed to be intelligently entered." Guglielmetti v. Turner, 496 P.2d 261, 262 (Utah 1972).

It is interesting to note that Mr. Godfrey did not see an entrapment issue; he said Ms. Salerno, the other defense attorney, found that issue. Her statement to the court is also revealing, "it appears as though there might very well be an applicable entrapment defense or other defense or it's along the lines of newly discovered evidence." T.6 Addendum. No wonder the trial court observed, "I don't see any. . . entrapment evidence at all, either in your statement or their statement." T.7 Addendum. The defendant herself stated to the court, "I didn't sell drugs." T.5 Addendum. Yet, she stated in writing, "I sold drugs. . ." R.13, also in her own words when she pleaded guilty, in answer to the question, "Did you sell cocaine to somebody?" she replied, "Yeah." T.21.

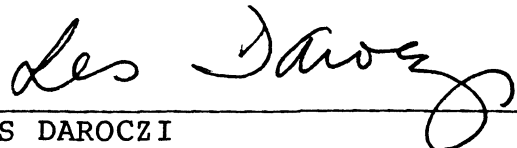
CONCLUSION

The court should find that defendant/appellant failed to meet it's burden to show that the trial judge abused it's discretion in denying a motion to withdraw her pleas of guilty. The conviction should be affirmed.

ADDENDUM

A copy of the Reporter's transcript of the sentencing is attached.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of Apr, 1988.



LES DAROCZI  
Deputy Weber County Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 29<sup>th</sup> day of Apr, 1988, I mailed four (4) true and correct copies of the foregoing Brief of Respondent, postage prepaid, to:

Ted Godfrey  
Attorney for Appellant  
205 Twenty Sixth Street, Suite 13  
Ogden, Utah 84401



LES DAROCZI  
Deputy Weber County Attorney

## ADDENDUM



1                   OGDEN, UTAH SEPTEMBER 16, 1987 2:00 P.M.

2           THE COURT:           STATE OF UTAH VERSUS GALLEGOS, VICKI  
3 GALLEGOS. HAVE YOU SEEN THIS INFORMATION THEY GAVE ME?

4           MR. GODFREY:       YES, YOUR HONOR. HOWEVER, MISS  
5 GALLEGOS TODAY INFORMED ME THAT SHE WOULD LIKE TO MOVE TO  
6 WITHDRAW HER GUILTY PLEAS AND HAVE THESE MATTERS RESET FOR  
7 TRIAL. THE REASON FOR THAT IS BECAUSE SHE BELIEVES THAT  
8 THERE MAY BE AN ENTRAPMENT ISSUE THAT SHE WANTS TO BRING UP.  
9 IN MY DEALINGS WITH HER PRIOR TO THIS TIME, I DID NOT SEE AN  
10 ENTRAPMENT ISSUE. WE NEVER TALKED ABOUT IT. BUT SHE APPAR-  
11 ENTLY TALKED WITH ANOTHER ATTORNEY AND FEELS LIKE THERE IS  
12 SOMEWHAT OF A FACTUAL BASIS FOR AN ENTRAPMENT ISSUE, AND  
13 WANTS TO WITHDRAW HER PLEA.

14          THE COURT:       WHAT SAY --

15          MR. GODFREY:       TO ALL THE CHARGES.

16          MR. DAINES:       YOUR HONOR, WHO TOOK THESE PLEAS? MY  
17 RECORD DOESN'T SHOW THAT. DID YOUR HONOR TAKE THESE PLEAS?

18          MR. GODFREY:       IT WAS ON THE 26TH.

19          MR. DAINES:       IT WAS JUDGE ROTH, WASN'T IT?

20          MS. SALERNO:       YES.

21          MR. DAINES:       THAT'S WHAT I T-TOUGH1. I DO HAVE SOME-  
22 THING TO SAY ABOUT THIS, YOUR HONOR. AS MR. GODFREY HAS  
23 STATED, THEY HAVE SEEN THE RECOMMENDATION. I HAVEN'T, BUT  
24 I'VE BEEN TOLD THAT THE RECOMMENDATION IS FOR STATE PRISON.  
25 IS THAT CORRECT, MR. GODFREY?

1 MR. GODFREY: YES.

2 MR. DAINES: ALL RIGHT. SHE PLED IN ON SEPTEMBER  
3 OR ON AUGUST 26TH IN FRONT OF JUDGE ROTH OF THIS COURT.  
4 JUDGE ROTH SPENDS A GREAT DEAL OF TIME WITH EACH PERSON  
5 HE TAKES A PLEA FROM, GOES THROUGH ALL OF THE APPLICABLE  
6 WARNINGS VERY CAREFULLY. AT THAT TIME SHE WAS GIVEN ALL  
7 THESE WARNINGS. SHE ELECTED TO PLEAD TO THESE TWO CHARGES  
8 ANYWAY. UPON ARRIVING HERE TODAY, SHE RECEIVED NOTICE OF  
9 FACT THAT THE RECOMMENDATION OF A.P.&P. WAS FOR PRISON, A  
10 SO NOW SHE'S STANDING BEFORE THE COURT REQUESTING TO WITHDRAW  
11 HER PLEA. AND I DON'T BLAME HER. SHE TOOK HER CHANCES WITH  
12 THE COURT WHEN SHE PLED IN. A VALID PLEA WAS TAKEN BY THE  
13 JUDGE. NOW SHE WANTS TO WITHDRAW IT FOR THE OBVIOUS REASON  
14 THAT THE RECOMMENDATION IS FOR PRISON. TO PERMIT HER TO  
15 WITHDRAW AN OTHERWISE VALID PLEA WITHOUT ANY FURTHER SHOW  
16 THAN WHAT HAS BEEN SHOWN HERE TODAY, YOUR HONOR, WOULD HAVE  
17 THE EFFECT OF TURNING DISTRICT COURTS INTO GAMBLING PALACES.  
18 WHAT YOU DO IS PLEAD IN. IF YOU DON'T GET WHAT YOU WANT,  
19 ASK TO WITHDRAW YOUR PLEA. AND WE WOULD OBJECT TO IT.

20 MR. GODFREY: YOUR HONOR, THAT'S NOT ACCURATE. MR.  
21 GALLEGOS REQUESTED ME TO WITHDRAW HER PLEAS BEFORE SHE KNEW  
22 WHAT THE RECOMMENDATION WAS. SHE ASKED ME WHAT THE RECOMMENDATION  
23 WAS AFTER WE TALKED ABOUT IT.

24 THE COURT: WHAT'S THIS ENTRAPMENT GOT TO DO WITH  
25 THIS THEFT?

1 MR. GODFREY: IT'S ON THE -- WELL, THE REASON SHE  
2 WOULD ASK FOR A WITHDRAWAL OF ALL HER PLEAS IS BECAUSE -- THE  
3 REASON SHE PLED GUILTY WAS THERE WAS A PLEA BARGAIN. SHE  
4 WANTS TO GO TO TRIAL ON THE ENTRAPMENT, AND SPECIFICALLY WITH  
5 THE DRUG CASE, IS THAT CORRECT?

6 MS. GALLEGOS: (MS. GALLEGOS NODS.)

7 MR. GODFREY: AND WE WOULD JUST -- WE WOULD ASK THAT  
8 THE PLEA BARGAIN ARRANGEMENT BE WITHDRAWN.

9 THE COURT: IS THIS AGREEMENT THAT WAS SIGNED, WAS  
10 THERE SOME UNFAIRNESS IN IT? THAT WAS GIVEN TO JUDGE ROTH?

11 MR. GODFREY: I DON'T KNOW WHAT YOU MEAN BY THAT.  
12 WE WENT THROUGH IT, AND I BELIEVE I WENT THROUGH IT WITH HER  
13 WELL, IT'S MY HANDWRITING ON THERE. I THOUGHT I HAD GONE  
14 THROUGH IT. IT'S POSSIBLE SOMEBODY ELSE FROM OUR OFFICE WENT  
15 THROUGH IT WITH HER. WHO DID --

16 THE COURT: WHAT DOES THIS -- THERE'S MORE THAN ONE  
17 CHARGE. DRUG DEALING -- YOU SAY THEY'RE ALL ENTRAPMENT  
18 CHARGES?

19 MS. GALLEGOS: NO.

20 MR. GODFREY: JUST --

21 MS. GALLEGOS: JUST THE DRUG, I --

22 MR. GODFREY: SECOND DEGREE?

23 MS. GALLEGOS: YEAH.

24 MR. GODFREY: JUST THE SECOND DEGREE APPARENTLY.

25 THE COURT: BUT THERE WERE OTHER POTENTIAL CHARGES

1 THAT WERE INVOLVED IN THE PLEA BARGAIN.

2 MR. GODFREY: YES. WELL, AND THE THEFT I BELIEVE  
3 ORIGINALLY A THIRD DEGREE FELONY AND IT WAS REDUCED TO A  
4 CLASS "A" MISDEMEANOR BECAUSE OF HER AGREEMENT TO PLEAD TO  
5 THE DISTRIBUTION. SO SHE WOULD LIKE TO -- BECAUSE IT WAS  
6 A PACKAGE DEAL, SHE WOULD LIKE TO WITHDRAW HER PLEAS TO THE  
7 WHOLE PACKAGE.

8 THE COURT: STATE HAVE ANYTHING ELSE THEY WANT  
9 SAY?

10 MR. DAINES: NO, YOUR HONOR.

11 THE COURT: DO YOU HAVE SOMETHING ELSE YOU WANT  
12 SAY? IT WOULD APPEAR TO THE COURT THAT UNLESS YOU'VE GOT  
13 SOME -- SOMETHING MORE TO POINT TO, THAT IT'S --

14 MS. GALLEGOS: I FELT LIKE I WAS PRESSURED TO PLEAD  
15 GUILTY BECAUSE WHEN I WENT HOME, I DID NOT FEEL RIGHT ABOUT  
16 IT, BECAUSE I DIDN'T SELL DRUGS.

17 MS. SALERNO: YOUR HONOR, I MIGHT BE ABLE TO BE OF  
18 SOME HELP IN THIS CASE. IF IT PLEASE THE COURT, WE WERE -  
19 WE'RE IN THE PROCESS OF TRYING A CASE IN FRONT OF JUDGE HYDE  
20 COME TO OUR ATTENTION, THAT THERE WERE TWO CONFIDENTIAL  
21 INFORMANTS, NUMBERS 294 AND 285. AFTER TRYING TO DISCOVER  
22 WHO THESE PEOPLE WERE, WE WERE UNABLE TO DO THIS, AND I THINK  
23 EVERYBODY ELSE INVOLVED IN THIS DRUG SWEEP WITH THESE TWO  
24 AGENTS INVOLVED ASSUMED NOBODY COULD GET TO THESE AGENTS.  
25 YESTERDAY AFTERNOON, THE COUNTY ATTORNEY'S OFFICE HAS MADE



1 ONE OF THESE PEOPLE AVAILABLE FOR THIS TRIAL. AND BASED ON  
2 HIS TESTIMONY, IT APPEARS AS THOUGH THERE MIGHT VERY WELL B  
3 AN APPLICABLE ENTRAPMENT DEFENSE OR OTHER DEFENSE OR IT'S  
4 ALONG THE LINES OF NEWLY DISCOVERED EVIDENCE.

5 MR. DAINES: MAY I RESPOND TO WHAT THIS ATTORNEY,  
6 WHO DOES NOT REPRESENT THIS PERSON, HAS JUST SAID?

7 THE COURT: YES.

8 MR. DAINES: THANK YOU, YOUR HONOR.

9 MS. SALERNO: A FRIEND TO THE COURT.

10 MR. DAINES: WELL, EXCEPT SHE WASN'T APPOINTED A  
11 FRIEND OF THE COURT, AND IT'S MY UNDERSTANDING THAT SHE HAS  
12 TAKEN THE OCCASION -- I THINK MR. GODFREY AND OTHER ATTORNEY  
13 FROM THE PUBLIC DEFENDERS' OFFICE WILL STIPULATE TO THIS,  
14 THAT SHE HAS TAKEN THE OCCASION TO APPROACH ON HER OWN THIS  
15 DEFENDANT, IS THAT CORRECT, COUNSEL?

16 MR. GODFREY: THAT'S CORRECT, YOUR HONOR. MISS  
17 SALERNO DID CONTACT MISS GALLEGOS.

18 MS. SALERNO: SHE'S A WITNESS IN THAT TRIAL T-15  
19 AFTERNOON.

20 THE COURT: LET ME HEAR HIM OUT.

21 MR. DAINES: SHE HAS STOOD BEFORE THE COURT AND  
22 SHE'S MADE AN INDICATION THAT THERE WERE TWO UNDERCOVER  
23 AGENTS WHO WERE INVOLVED IN THIS, WHICH SHE IS ASSUMING  
24 THESE PEOPLE WANTED TO CONTACT, BUT WERE UNABLE TO, BUT  
25 THERE'S NO EVIDENCE BEFORE THE COURT THAT THAT WAS THE CASE,

1 OR THAT EITHER OF THESE PEOPLE WOULD HAVE ANYTHING TO DO  
2 WITH HER CASE. AND THAT'S MY POINT, YOUR HONOR. ABSENT AN  
3 OTHER EVIDENCE, WHICH THEY ARE UNWILLING OR APPARENTLY UNAB  
4 TO ADDUCE AT THIS HEARING, THERE IS NO EVIDENCE AS TO WHY  
5 THIS WASN'T AN OTHERWISE VALID PLEA. THE PERSON THAT MRS.  
6 SALERNO IS TALKING TO, THEY HAVEN'T EVEN MADE THE CLAIM THA  
7 HE HAS ANYTHING TO DO WITH THIS CASE.

8 THE COURT: I DON'T SEE IN THIS RECITAL OF EITHER  
9 HER VERSION OF WHAT HAPPENED OR THE STATE'S VERSION MORE TH  
10 ONE UNDERCOVER AGENT. ISN'T THERE JUST ONE?

11 MS. GALLEGOS: NO. THERE WAS A FRIEND THAT ASKED ME  
12 TO DO A FAVOR, AND THAT'S HOW IT ALL BECAME --

13 THE COURT: WHAT THEY'RE SAYING IN EFFECT IS, IS  
14 THAT HE SAYS, AND WHAT I SEE IS, HE CAME TO YOUR HOUSE AND  
15 YOU WERE LIVING WITH A MAN NAMED FREDDIE SOMETHING. YOU HA  
16 A LITTLE CHILD THREE YEARS OLD. HE TALKED TO YOU AND YOUR  
17 FRIEND TO -- TALKED ABOUT PRISON AND PUTTING THE DRUGS IN  
18 THE PRISON AND THINGS LIKE THAT. THEN HE -- YOU LEFT AND  
19 WENT AND GOT THE COKE AND COME BACK. THIS IS THE GENERAL  
20 VERSION THAT I GET HERE. HERE I DON'T SEE ANY OTHER ENTRAP-  
21 MENT EVIDENCE AT ALL, EITHER IN YOUR STATEMENT OR THEIR  
22 STATEMENT.

23 MS. GALLEGOS: WELL, A FRIEND ASKED ME TO DO HIM A  
24 FAVOR AND CAME TO MY HOUSE WITH I GUESS THE COP AND AKSED ME  
25 AND OFFERED ME COCAINE, AND I'M A JUNKIE AND I CAN'T REFUSE

1 SOMETHING THAT --

2 THE COURT: DO YOU HAVE ANYTHING ELSE YOU WANT  
3 SAY?

4 MR. GODFREY: NO, YOUR HONOR.

5 THE COURT: MOTION DENIED. DO YOU HAVE SOMETHING  
6 ELSE YOU WANT TO SAY?

7 MR. GODFREY: YES, YOUR HONOR. ON THE --

8 THE COURT: APPEARS TO THE COURT THAT THIS IS A  
9 STRAIGHT GAMBLE ON A BETTER RECOMMENDATION. DISAPPOINTMENT  
10 OF THE RECOMMENDATION, NOT ON ANY CHANGE OF FACT.

11 MR. GODFREY: WELL, YOU'VE ALREADY MADE YOUR RULING  
12 ON THAT, BUT THAT ISN'T THE CASE. SHE DID ASK ME THAT BEFORE  
13 I EVEN TOLD HER WHAT THE RECOMMENDATION WAS. IF YOU'RE  
14 GOING TO SENTENCE HER THEN TODAY, WHAT WE'D LIKE TO INDICATE  
15 IS THAT VICKI HAS BEEN, AS SHE INDICATED, SHE IS A DRUG  
16 ADDICT, AND ALL OF HER PROBLEMS WITH THE LAW HAVE BEEN ASSO-  
17 CIATED WITH THAT. SHE HAS BEEN GOING THROUGH SOME COUNSELING  
18 AND TREATMENT WITH BILL FLETCHER OF THE WEBER COUNTY  
19 ALCOHOL AND DRUG, AND I THINK HE'S HERE.

20 MR. DAINES: HE JUST WALKED IN THE BACK.

21 MR. GODFREY: BACK THERE, YOUR HONOR. HE HAS  
22 INDICATED IN THE REPORT SHE IS MAKING VERY GOOD PROGRESS.  
23 SHE'S NEVER HAD A CHANCE TO OVERCOME HER PROBLEM, AND WE  
24 WOULD LIKE TO ASK THE COURT THAT RATHER THAN SENTENCING HER  
25 TO PRISON, THAT SHE BE ALLOWED TO COMPLETE SOME MENTAL